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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,783	02/16/2001	Robert A. Foster	M-9381 US	3408

32605 7590 09/22/2003

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EXAMINER

FISCHER, ANDREW J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 09/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/785,783

Applicant(s)

FOSTER, ROBERT A.

Examiner

Andrew J. Fischer

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 11 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-38 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3627

DETAILED ACTION

Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-8, drawn to a method.
 - II. Claims 9-25, drawn to a method.
 - III. Claims 26-38, drawn to a medium.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as multi-entity price apportionment . See MPEP § 806.05(d).
3. Because these inventions are distinct for the reasons given above, because the search required for Group I is not required for Group II, and because the inventions have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. It is the Examiner's position that Invention III is not patentably distinct from Invention II. A restriction at this time is therefore improper. See MPEP §802.01. As currently claimed, should Applicant choose Invention II, Invention III will also be examined. And likewise, should Applicant choose Invention III, Invention II will also be examined. However, should Applicant amend either Inventions II or III so that they become patentably distinct from each other, an

Art Unit: 3627

additional restriction at that time will follow. See MPEP §811 allowing restrictions at anytime prior to the application being under a Final Rejection.

5. Should Applicant disagree with the Examiner and find that, as currently claimed, Inventions II and III *are* patentably distinct, Applicant is respectfully requested, in accordance with 37 C.F.R. §1.111(b), to make his position known to the Examiner in Applicant's next response.

Election of Species

6. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species A: Represented by Figure 1; and

Species B: Represented by Figure 2.

In addition to the above, Applicant is also required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

7. Applicant is advised that a reply to this requirement must include both a choice of invention (*i.e.* either Inventions I, II, or III) *and* an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added in response to this Office Action or in any future amendment. An

Art Unit: 3627

argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

8. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election in response to this Office Action or in any future amendment, Applicant must indicate which newly added claims are readable upon the elected species. MPEP § 809.02(a).

9. Should Applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the Examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

10. A telephone call was made to Do Te Kim on or about September 11, 2003 to request an oral election to the above restriction requirement, but did not result in an election being made

11. Applicant is advised that the reply to this requirement to be complete must include both a choice of invention (*i.e.* either Inventions I, II, or III) *and* an Election of Species (*i.e.* Species A or B) to be examined even though the requirement(s) are traversed (37 CFR 1.143).

Art Unit: 3627

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew J. Fischer whose telephone number is (703) 305-0292. The fax number for facsimile responses is now (703) 872-9306.

AJFischer 9/20/03

Andrew J. Fischer
Patent Examiner

AJF
September 20, 2003